IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 496 OF 2005
(FOR LEAVE TO APPEAL)

The State of Maharashtra. ..Applicant.

Vs.

Keru Kachru Bodke .. Respondent.

Ms.Usha Kejariwal, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 31st January, 2005

P.C.

Heard Ms.Usha Kejariwal, the learned Additional Public Prosecutor.

2. Aggrieved by the acquittal of the respondent for the offence punishable under section 436 of the Indian Penal Code, the present criminal application for leave to appeal has been preferred by the State of Maharashtra.

3. The learned Additional Sessions Judge, Niphad considered the matter interalia, thus-

> "11. In this respect, there is no reason or cause of action or motive for the accused to set his own house on fire. On the point, the law is well settled that when there is cogent and clear evidence on record, the motive need not be established. In this backdrop, I would like to point out that the version of the alleged eye witness

appears cryptic and mechanical. She has not stated what utensil was used by the accused to pour kerosene, whether it was a bottle or a can or any other utensil used by the accused while pouring kerosene. She says in her evidence at Exh.6 that he poured kerosene on the roots of sugarcane which were kept near his door and set it on fire. Further more, this witness has not made any reference of the accused, as to whether he ran away or stayed there to watch fire etc. She has also not made any reference, who else had seen while the accused was setting his house on fire. In this respect, it is also pertinent to note that the house is situated in the village as revealed from the spot panchanama Exh.8. This witness says that the accused was pouring kerosene, at that time she could have raised hue and cry and people could have prevented the accused from setting the house on fire.

12. In this respect, it is also pertinent to note that as per FIR and version of the witnesses three houses were caught fire and totally destroyed by the fire. Had this witness witnessed the accused while setting the house on fire, her natural conduct would have been to make hue and cry and villagers would have extinguished fire before causing much damage to the house situated at the ground floor itself. In such circumstances, there would not have any damage to the other two houses. However, as three houses were totally destroyed by fire, from this circumstance it is revealed that the fire must not have been noticed by the villagers at early stage. In this respect, it was suggested to the PW2 Ranjana n her cross examination at Exh.6 that the accused used to remain out of the house for a whole day as he was residing alone. Though this witness has denied the knowledge about the same, it appears that as house of the accused was closed and nobody noticed fire at an early stage, therefore, the fire was out of control when it was first seen and ultimately three houses caught fire and totally damaged. This possibility cannot be ruled out. This circumstance falsify the prosecution case that PW2 had witnessed the accused while setting the house on fire.

14. In such backdrop, possibility if false implication cannot be ruled out. Moreover,

> when the version of PW2 Ranjana appears cryptic and stereo type. Only in one sentence she says that the accused poured kerosene and set the sugarcane roots on fire. She has not given the details what the accused did after setting his house on fire and what was the utensil used by the accused for pouring kerosene and where did the utensil was kept by the accused. In the circumstances, conclusion can be arrived at possibility of accidental fire cannot be ruled out. It might have noticed by the villagers when the fire had spread out of control causing damage to the three houses. At the cost of repetition, I would like to point out that had alleged eye witness seen the accused setting his house on fire, it could have extinguished by the villagers. Had she made hue and cry by seeing the incident, however, fact appears otherwise."

4. No infirmity could be pointed out by the learned APP in consideration of the matter by the learned Additional Sessions Judge.

5. No case for grant of leave to appeal is made out. Criminal application for leave to appeal is, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)